



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 9, 1996

Ms. Lan P. Nguyen
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-0163

Dear Ms. Nguyen:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38273.

The City of Houston (the "city") received an open records request for "all records detailing any internal investigation conducted by the Houston Fire Department since January 1, 1994." You contend the requested records are made confidential under section 143.089(g) of the Local Government Code and thus must be withheld from the public pursuant to section 552.101 of the Government Code.¹

In Open Records Decision No. 562 (1990), this office discussed the confidentiality of personnel files maintained by police and fire departments in cities that have adopted the fire fighters' and police officers' civil service law in accordance with the provisions of chapter 143 of the Local Government Code. Section 143.089 provides for the creation of two personnel files for fire fighters: one that is maintained by the city's civil service director and the other by the city fire department. With regard to records maintained by the city's fire department, section 143.089(g) provides:

(g) A fire . . . department may maintain a personnel file on a *fire fighter* . . . employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a *fire fighter* The department shall refer to the

¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

director [of civil service] or the director's designee a person or agency that requests information that is maintained in the *fire fighter's . . . personnel file*. [Emphasis added.]

We note at the outset that in this instance section 143.089(g) makes confidential only those records pertaining to "fire fighters." To the extent that the requested records consist of internal affairs investigations of civilian fire department employees, those records would not be confidential under section 143.089(g). Because you make no other argument as to why such records should be withheld from the public, any such records held by the Houston Fire Department must be released. *See also* Loc. Gov. Code § 143.021(b) (fire chief excluded from civil service protection afforded to other fire fighters). However, to the extent that the requested records consist of fire department records of internal affairs investigations of Houston fire fighters, as defined by chapter 143 of the Local Government Code, we agree that those records are made confidential under section 143.089(g) and must be withheld in their entirety.

This does not, however, end our discussion of this open records request. As noted above, the request for records was served on the city as a whole, not only on the Houston Fire Department. Section 143.089 also requires the establishment of a separate civil service personnel file for each fire fighter:

(a) The director [of the fire fighters' and police officers' civil service] or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

....

(2) any misconduct by the fire fighter or the police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter

....

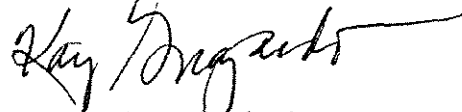
(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, *unless the release of the information is required by law*. [Emphasis added.]

In Open Records Decision No. 562 (1990), this office determined that under section 143.089(f), information contained in personnel files held by the civil service must be released to the public unless the information comes within one of the Open Records Act's exceptions to required public disclosure. In this instance you have raised none of the act's exceptions with regard to the requested civil service files. Accordingly, those

personnel files must be released in their entirety unless you can demonstrate compelling reasons for non-disclosure. *See Open Records Decision No. 515 (1988) at 6.*

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hamilton Guajardo
Assistant Attorney General
Open Records Division

KHG/RWP/ch

Ref.: ID# 38273

Enclosures: Submitted documents

cc: Mr. Wayne Dolcefino
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(w/o enclosures)